



BAC2210-40

UNITED STATES SENTENCING COMMISSION

Final Priorities for Amendment Cycle

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In June 2017, the Commission published a notice of proposed policy priorities for the amendment cycle ending May 1, 2018. See 82 FR 28381 (June 21, 2017). After reviewing public comment received pursuant to the notice of proposed priorities, the Commission has identified its policy priorities for the upcoming amendment cycle and hereby gives notice of these policy priorities.

FOR FURTHER INFORMATION CONTACT: Christine Leonard, Director, Office of Legislative and Public Affairs, (202) 502-4500, pubaffairs@ussc.gov.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified its policy priorities for the amendment cycle ending May 1, 2018. Other factors, such as legislation requiring Commission action, may affect the Commission's ability to complete work on any or all

identified priorities by May 1, 2018. Accordingly, the Commission may continue work on any or all identified priorities after that date or may decide not to pursue one or more identified priorities.

Pursuant to 28 U.S.C. 994(g), the Commission intends to consider the issue of reducing costs of incarceration and overcapacity of prisons, to the extent it is relevant to any identified priority.

The Commission has identified the following priorities:

(1) Continuation of its multiyear examination of the structure of the guidelines post-Booker and consideration of legislative recommendations or guideline amendments to simplify the guidelines, while promoting proportionality and reducing sentencing disparities, and to account appropriately for the defendant's role, culpability, and relevant conduct.

(2) Continuation of its multiyear study of offenses involving synthetic cathinones (such as methylene, MDPV, and mephedrone) and synthetic cannabinoids (such as JWH-018 and AM-2201), as well as tetrahydrocannabinol (THC), fentanyl, and fentanyl analogues, and consideration of appropriate guideline amendments, including simplifying the determination of the most closely related substance under Application Note 6 of the Commentary to §2D1.1.

(3) Continuation of its work with Congress and others to implement the recommendations of the Commission's 2016 report to Congress, Career Offender Sentencing Enhancements, including its recommendations to revise the career offender directive at 28 U.S.C. 994(h) to focus on offenders who have committed at least one "crime of violence" and to adopt a uniform definition of "crime of violence" applicable to the guidelines and other recidivist statutory provisions.

(4) Continuation of its work with Congress and others to implement the recommendations of the Commission’s 2011 report to Congress, Mandatory Minimum Penalties in the Federal Criminal Justice System—including its recommendations regarding the severity and scope of mandatory minimum penalties, consideration of expanding the “safety valve” at 18 U.S.C. 3553(f), and elimination of the mandatory “stacking” of penalties under 18 U.S.C. 924(c)—and preparation of a series of publications updating the data in the report.

(5) Continuation of its comprehensive, multiyear study of recidivism, including the circumstances that correlate with increased or reduced recidivism; consideration of developing recommendations to reduce incarceration costs and prison overcapacity, and to promote effective reentry programs; and consideration of appropriate guideline amendments, including revising Chapter Four and Chapter Five (A) to lower guideline ranges for “first offenders” and (B) to increase the availability of alternatives to incarceration for such offenders at the lower levels of the Sentencing Table.

(6) Implementation of the Bipartisan Budget Act of 2015, Pub. L. 114–74, and other legislation warranting Commission action.

(7) Continuation of its study of the May 2016 Report of the Commission’s Tribal Issues Advisory Group and consideration of appropriate guideline amendments, including (A) revising how tribal court convictions are addressed in Chapter Four and (B) providing a definition of “court protection order” that would apply throughout the guidelines.

(8) Continuation of its examination of Chapter Four, Part A (Criminal History) and consideration of amendments to revise how the guidelines (A) treat convictions for offenses committed prior to age eighteen; (B) treat revocations under §4A1.2(k) when the original

sentence would not otherwise receive criminal history points because it is outside the time periods in §4A1.2(d)(2) and (e); and (C) account in §4A1.3 for instances in which the time actually served was substantially less than the length of the sentence imposed for a conviction counted in the criminal history score.

(9) Continuation of its study of alternatives to incarceration, preparation of a publication on the development of alternative-to-incarceration programs in federal district courts, and consideration of appropriate guideline amendments, including consolidating Zones B and C of the Sentencing Table in Chapter 5, Part A.

(10) Resolution of circuit conflicts as warranted, pursuant to the Commission's authority under 28 U.S.C. 991(b)(1)(B) and Braxton v. United States, 500 U.S. 344 (1991).

(11) Consideration of other miscellaneous guideline application issues, including whether a defendant's denial of relevant conduct should be considered in determining whether the defendant has accepted responsibility for purposes of §3E1.1.

AUTHORITY: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

William H. Pryor, Jr.

Acting Chair

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